

July 15, 2019

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VIA E-MAIL & FIRST CLASS MAIL

Chief Kerr Putney
Charlotte-Mecklenburg Police Department
c/o Police Attorney Mark Newbold
601 East Trade Street
Charlotte, NC 28202-2940
mnewbold@cmpd.org

Re: Drafts of Use of Force Policies from the Citizens Review Board for Discussion at our July 23, 2019 Meeting

Dear Chief Putney:

I write this letter on behalf of the Citizens Review Board. First, thank you for your time, remarks to the Board, and conversations with Board members on June 11. The Board members appreciated the opportunity for that meeting very much. They look forward to continuing discussions with you at the upcoming July 23, 2019, meeting at 4:30 p.m. at the Government Center.

Since the discussions on June 11 and your invitation to draft possible use of force policies, the CRB has spent considerable time drafting its own versions of potential use of force policies. For your consideration, and that of the CMPD, we provide with this letter copies of the various policies drafted. Specifically, first, we include a draft Use of Deadly Force Policy (600-018). Second, we include a draft Use of Less Lethal Force Policy (600-019), which includes within it (at the end) a revised version of a Management of Conducted Electrical Weapons Policy (600-019-A) and a revised version of a Use of Force Continuum Policy (600-020).

Please note that in terms of structure and appearance, the CRB has tried to follow what the CMPD currently does in each of its policies. Please also realize, however, that in terms of content, the CRB believes that these policies differ significantly from what is currently in place.

As you review the policies, please be aware of the following five points that the CRB hopes to emphasize in any new policies created for CMPD. First, the CRB advances the idea of a "guardian mentality" for police officers, rather than a warrior mentality. Second, in terms of deadly force, the CRB wants to stress that the constitutionally protected right of a citizen to carry a weapon, standing alone, is not a sufficient justification for CMPD officers to shoot that citizen, but rather still requires a totality of the circumstances analysis before using deadly force. Third, the CRB stresses – as you also indicated at the June 11 meeting – the importance of featuring de-escalation in strong policies as well as in heightened training. Here, in these draft policies, the CRB focuses both on (i) the general idea of the need to attempt de-escalation before moving to any use of force, as well as (ii) hopefully very specific examples of de-escalation techniques. Fourth, the CRB would like to see the CMPD impose a duty on other officers to

intervene when they perceive a fellow officer is not complying with CMPD's hoped-for policies concerning de-escalation and the proper handling of encounters with potentially violent suspects or citizens. Fifth, please be aware that as a means of bolstering community trust, the CRB recommends that the CMPD allow and provide for simultaneous investigations of any use of deadly force incident by another law enforcement agency or potential private agency while CMPD's own investigation is ongoing. Please realize that there are other changes and issues addressed in these policies, but the CRB wanted to highlight these particular issues in this letter before you review the policies themselves.

The Board had understood on June 11 that CMPD continues to work on its own revised drafts of its use of force policies. The CRB also understood that you would provide a current working copy of those draft policies to the CRB as it worked on its own draft policies. The Board now understands, however, from communications between me and Rob Tufano, that you would prefer not to exchange drafts of potential policies until you have had time to review the CRB's draft policies. If it is still feasible for you and CMPD to finish at least a revised draft of the Department's use of force policies and share them with the CRB prior to our July 23 meeting, that would be most appreciated.

Again, the CRB looks forward to having the opportunity to continue these discussions with you and the Department on July 23. That meeting will start at 4:30 pm. The City Clerk's Office has secured Rooms 270/271 at the Government Center for the meeting. We look forward to seeing you there. If you have any questions or concerns about these materials in the interim, please do not hesitate to contact our office. As ever, thank you for the tremendous work that you and CMPD play in safeguarding our entire community.

Best wishes.

Very truly yours,

ROBINSON, BRADSHAW & HINSON, P.A.




Julian H. Wright, Jr.

JHW/rt

Encls.

cc: Gabriel J. Wright (*w/encls. via email*)
Cary B. Davis (*w/encls. via email*)
Citizens Review Board members (*w/encls. via email*)
City Clerk's Office (*w/encls. via email*)
CMPD Public Affairs Director Rob Tufano (*w/encls. via email*)
CMPD Deputy Chief Estella Patterson (*w/encls. via email*)

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I. PURPOSE

The purpose of this policy is to provide officers of the Charlotte-Mecklenburg Police Department (CMPD) with guidelines for the use of deadly force.


II. POLICY

CMPD recognizes and respects the integrity and paramount value of all human life. CMPD commits itself to a culture of guardianship for itself and the community, so that the goal of all encounters is that all people—CMPD officers, suspects, and members of the public—leave the encounter without a loss of life or serious (or any) bodily harm. Consistent with this primary value, a CMPD officer shall use deadly force only when reasonably necessary.

Situations unfortunately always will exist when police officers will need to use force, including deadly force, to protect the public or themselves. Officers should not hesitate to use force that is necessary to mitigate a threat to the safety of themselves or others. CMPD, however, recognizes the sanctity and protection of *all* human life as a core value, and this value should undergird all CMPD policies and actions. Deadly force should be employed only in the most extreme circumstances when: (i) de-escalation is either simply not possible or has failed; and (ii) all lesser means of force have failed or could not be reasonably employed. CMPD seeks to implement policies, practices, and training on use-of-force that go beyond minimum legal requirements and strives to employ force, especially lethal force, only when necessary. CMPD officer safety is vitally important, but so is the safety of the public and the people with whom CMPD officers interact.

III. DEFINITIONS


- A. **Deadly Force:** Any force that is reasonably likely to cause death or serious injury. Force that is not reasonably likely to cause death or serious physical injury, but unexpectedly results in death or serious injury is not considered deadly force. The discharging of a firearm at a person is always considered deadly force.
- B. **Reasonably Necessary:** Whether a reasonable officer in the same or similar circumstances objectively believes deadly force is required to prevent an immediate threat of deadly force against himself/herself or another person, based on a continuous assessment of the totality of circumstances, including:
 - 1. The severity of the crime at issue;
 - 2. The immediate threat a person poses to the safety of the officer or others;

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3. The person's active resistance to arrest or attempts to evade arrest by flight;
 4. The person's ability to immediately comprehend or effectively comply with an officer's verbal commands; and
 5. The potential for injury to citizens, officers or subjects.
- C. Immediate Threat: The objectively reasonable belief that deadly force is about to occur against the officer or another person. An immediate threat occurs when:
1. An officer has made all reasonable attempts to de-escalate the encounter, de-escalation fails; or
 2. The officer has exhausted all reasonable alternatives to the use of deadly force; or
 3. The officer reasonably believes a person will use deadly force against the officer or another person before any attempts to de-escalate the encounter or exhaust reasonable alternatives can be made.

An armed person shall not automatically be deemed an immediate threat simply by virtue of being armed. Therefore, an officer who encounters an armed person must still make all reasonable efforts to de-escalate the encounter or exhaust all reasonable alternatives prior to using deadly force. If the officer encounters a situation like scenario (3) above, namely when there is no opportunity to make attempts to de-escalate or exhaust reasonable alternatives, then the officer is not required to make reasonable attempts to de-escalate the encounter or employ other reasonable alternatives.

- D. De-escalation: Actions taken by the officer to resolve the encounter without use of force, deadly or otherwise, or to reduce any immediate threat. Specifically, when possible to prevent instances that require the use of deadly force, CMPD officers should use techniques and communication strategies to calm individuals who appear to be agitated or threatening as well as to gain compliance from unresponsive or uncooperative individuals who are not actually physically or verbally threatening officers or the public during an encounter. Similarly, to avoid instances that require the use of deadly force, CMPD officers also should use time, distance, and shielding techniques to avoid placing themselves in situations when they have no choice but to make split-second decisions that will likely result in injuries or death to themselves, suspects, or other citizens.

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De-escalation actions may include but are not limited to:

1. Clear verbal instructions about what the officer needs the suspect to do;
2. Communicating in a calm tone that demonstrates empathy and emphasizes the goal of preserving all human life;
3. Other methods of communication as are reasonable under the circumstances if the officer reasonably believes the suspect's ability to immediately comprehend or effectively comply with verbal warnings is impaired;
4. Clear warnings and advisements about the officer's perceived need to use deadly force, if possible;
5. Avoiding or minimizing physical confrontation, if possible;
6. Calling extra resources or specially-trained officers or personnel to assist; and
7. Tactical positioning, including adjusting distance to increase the officer's reaction time and using tactical coverage or shielding.

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the individual. When CMPD officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.


Selection of de-escalation options should be guided by the totality of the circumstances with the goal of attaining voluntary compliance and eliminating any need to use force, including deadly force.

All officers shall be required to successfully complete de-escalation training, including but not limited to, crisis intervention training.


IV. PROCEDURES FOR THE USE OF DEADLY FORCE

A. An officer may use deadly force only as follows:

1. When the officer believes that deadly force is reasonably necessary to defend himself/herself or another person from deadly force; or

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2. When the officer believes that deadly force is reasonably necessary to effect an arrest or prevent the escape from custody of a person who presents an immediate threat of death or serious physical injury to others unless apprehended without delay.
- B. Officers shall conduct threat assessment to make sure any use of force is reasonably necessary and to prevent any unnecessary, unreasonable, or disproportionate use of force by placing themselves or others in undue jeopardy.
 - C. An officer has an affirmative duty to engage in de-escalation with a person while analyzing whether deadly force is or will be reasonably necessary, unless an officer reasonably believes that de-escalation will impede his or her ability to prevent an immediate threat to himself/herself or another person.
 - D. An observing officer has an affirmative duty to intervene if another officer prepares to use deadly force or another officer's use of deadly force is imminent and the observing officer does not reasonably believe deadly force is reasonably necessary to prevent an immediate threat to the officer(s) or another person. The observing officer shall intervene and/or take control of the encounter and assess whether deadly force is necessary to prevent an immediate threat against the officer(s) or another person according to the analysis as defined under "Reasonably Necessary."
 - E. An officer will not discharge his or her firearm under the following circumstances:
 1. As a means of warning or frightening a person;
 2. At or from a moving vehicle, unless deadly force is being used against the officer or another person and the officer reasonably believes that no other option is reasonably available. Discharging a firearm in this circumstance is never authorized when it is reasonable to believe that the vehicle may contain an innocent passenger or it is reasonably apparent that the vehicle may careen out of control and injure an innocent bystander. When confronted with an oncoming vehicle, an officer will not position himself/herself into the path of the vehicle, but will take all reasonable steps to move out of the way;
 3. In connection with an investigation or arrest for a misdemeanor offense, when there is no immediate threat of death or serious injury to either the officer or another person;

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4. To stop or detain an individual based on reasonable suspicion that the individual is involved in criminal activity, when there is no immediate threat of death or serious injury to either the officer or another person;
5. To protect or prevent damage to real or personal property;
6. To disable a motor vehicle except pursuant to written protocol adopted by SWAT and approved by the Chief of Police, or designee; or
7. When based on the totality of the circumstances, discharging a firearm would constitute a greater risk to innocent human life than the person's actions. For example, discharging a firearm into a crowd or shooting into a building or through a wall, where the person is not clearly identified and it is unknown if there are other occupants present.

V. PROCEDURES FOLLOWING THE USE OF DEADLY FORCE

A. Medical Aid

Whenever deadly force is used against a person and the person is injured or the person requests medical aid, the officer who used deadly force or any other officer who witnessed the encounter will immediately request medical assistance.


After requesting the appropriate medical aid, the officer shall:

1. Secure the scene to protect the person from any further injury;
2. Apply any first aid he or she is trained and certified to apply and other medical aid, as is reasonable based on the circumstances of the encounter, whether or not trained and certified; and
3. Provide increased observation of the person to detect obvious changes in condition.

B. Duty to Report Use of Deadly Force

Any officer who uses deadly force, or witnesses another officer use deadly force, will immediately contact his or her supervisor.

C. Officer Involved Shooting Team (OIST)

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1. OIST will assume the overall responsibility for conducting an investigation whenever an officer uses deadly force resulting in a person's injury or death.
2. Any investigation conducted by OIST will be pursuant to the written protocol adopted by the Chief of Police, or designee. When possible, the investigation will include interviews by the end of the shift, or no later than within 24 hours, of any officer using deadly force or any officer witnessing such use of force. Such interviews will be conducted separately with each officer.

D. Internal Affairs Bureau

Whenever an officer uses deadly force, the Internal Affairs Bureau will be responsible for conducting an administrative investigation. When possible, the investigation will include interviews by the end of the shift, or no later than within 24 hours, of any officer using deadly force or any officer witnessing such use of force. Such interviews will be conducted separately with each officer.

E. Simultaneous Independent Investigation

The Department shall request that an independent agency investigate all uses of deadly force by Department officers concurrent with the Department's investigation.

F. Division Commander

The patrol division captain will ensure that all officers directly involved in a shooting or other use of deadly force incident schedule mandatory counseling sessions with the Department's psychologist in accordance with directive 300-020 Police Critical Incident Stress.


G. Immediate Supervisor

Whenever an officer uses deadly force, the officer's immediate supervisor will ensure that a support supervisor is dispatched to the scene. The support supervisor will comply with the responsibilities outlined in directive 300-020 Police Critical Incident Stress.

H. Support Supervisor

The support supervisor will ensure compliance with directive 300-020 Police Critical Incident Stress.

I. Administrative Leave

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1. Whenever the use of force by an officer(s) results in the serious injury or death of a person, the officer(s) will initially be removed from his or her line duties, pending the results of criminal or internal investigations.
2. The Chief of Police, or designee, may grant an officer three (3) days administrative leave with pay or longer.
3. An officer placed on administrative leave will remain available for call back.
4. The work status of an officer on administrative leave will be reviewed by the officer's chain of command within ten (10) days following the incident.

J. Negligent Discharge of Firearm


1. Any officer who negligently discharges a firearm will immediately contact his or her supervisor.
2. The supervisor will notify his or her chain of command and Internal Affairs and initiate an IACMS investigation.
3. All negligent discharges will be reviewed by a Shooting Review Board convened by Internal Affairs.

K. Euthanasia of Animals/Wildlife

1. Officers are authorized with approval of his or her supervisor to euthanize a seriously injured animal and if delay would cause needless suffering.
2. Supervisors will prior to authorizing an officer to euthanize an animal check to see if an Animal Care and Control Officer is available and nearby and defer to that unit if it can respond in a timely manner.
3. Supervisors will document the euthanasia of any animal in IACMS and route the investigation through his or her chain of command.

VI. REFERENCES

300-020 Police Critical Incident Stress
 400-002 Firearms
 600-019 Use of Non-Deadly Force
 600-020 Use of Force Continuum
 N.C.G.S. 15A-401(d)

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I. PURPOSE

The purpose of this policy is to provide officers of the Charlotte-Mecklenburg Police Department (CMPD) with guidelines for the use of less than lethal force.

II. POLICY

CMPD recognizes and respects the integrity and paramount value of all human life. CMPD commits itself to a culture of guardianship for itself and the community, so that the goal of all encounters is that all people—CMPD officers, suspects, and members of the public—leave the encounter without a loss of life or serious (or any) bodily harm. Consistent with this primary value is the Department's full commitment to only use force when it is reasonably necessary.

CMPD further recognizes that in some instances force may be legally justified at the moment the force is administered, but the officer's actions leading up to the use of force may be in violation of the Department's training or other policies. CMPD prohibits officers from intentionally or unnecessarily instigating a use of force. For example, an officer who taunts, verbally baits, or initiates needless or unnecessary contact with a person and then is forced to apply force immediately afterwards will be in violation of this or other policies. Finally, passive resistance (as defined in the Use of Force Continuum) is not in and of itself synonymous with the risk of imminent harm or danger to oneself or others.


III. DEFINITIONS

A. Immediate: The objectively reasonable belief that an event is about to occur.

B. Immediate Threat: An immediate threat occurs when:


1. An officer has made all reasonable attempts to de-escalate the encounter, de-escalation fails; or
2. The officer has exhausted all reasonable alternatives to the use of force; or
3. The officer reasonably believes a person will use force against the officer or another person before any attempts to de-escalate the encounter or exhaust reasonable alternatives can be made.

An armed person shall not automatically be deemed an immediate threat simply by virtue of being armed. Therefore, an officer who encounters an armed person must still make all reasonable efforts to de-escalate the encounter or exhaust all reasonable alternatives prior to using force. If the officer encounters a situation like scenario (3) above, namely when there is

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no opportunity to make attempts to de-escalate or exhaust reasonable alternatives, then the officer is not required to make reasonable attempts to de-escalate the encounter or employ other reasonable alternatives.

- C. **Less Than Lethal Option:** Any force employed using specialized equipment that is designed to temporarily incapacitate a person and is not reasonably likely to produce death or serious injury, including, but not limited to, Oleoresin Capsicum (OC spray), impact weapons, Conducted Electrical Weapon (CEW), and bean bag rounds.
- D. **Less Than Lethal Force:** Any physical exertion or device that is used to restrain or control another and which is not reasonably likely to cause death or serious injury.
- E. **Reasonably Necessary:** Whether a reasonable officer in the same or similar circumstances objectively believes that the use of force is required to prevent an imminent threat of force from being used against the officer or another person, based on a continuous assessment of the totality of circumstances, including:
 - 1. The severity of the crime at issue;
 - 2. The immediate threat a person poses to the safety of the officer or others;
 - 3. The person's active resistance to arrest or attempts to evade arrest by flight;
 - 4. The person's ability to immediately comprehend or effectively comply with an officer's verbal commands; and
 - 5. The potential for injury to citizens, officers or subjects.
- F. **De-escalation:** Actions taken by the officer to resolve an encounter without use of force, deadly or otherwise, or to reduce any immediate threat. Specifically, when possible to prevent instances that require the use of less than lethal force, CMPD officers should use techniques and communication strategies to calm individuals who appear to be agitated or threatening as well as to gain compliance from unresponsive or uncooperative individuals who are not actually physically or verbally threatening officers or the public during an encounter. Similarly, to avoid instances that require the use of less than lethal force, CMPD officers also should use time, distance, and shielding techniques to avoid placing themselves in situations when they have no choice but to make split-second decisions that could result in injuries or death to themselves, suspects, or other citizens.

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De-escalation actions may include but are not limited to:

1. Clear verbal instructions about what the officer needs the suspect to do;
2. Communicating in a calm tone that demonstrates empathy and emphasizes the goal of preserving all human life;
3. Other methods of communication as are reasonable under the circumstances if the officer reasonably believes the suspect's ability to immediately comprehend or effectively comply with verbal warnings is impaired;
4. Clear warnings and advisements about the officer's perceived need to use less than lethal force, if possible;
5. Avoiding or minimizing physical confrontation, if possible;
6. Calling extra resources or specially-trained officers or personnel to assist; and
7. Tactical positioning, including adjusting distance to increase the officer's reaction time and using tactical coverage or shielding.

Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the person. When CMPD officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.


Selection of de-escalation options should be guided by the totality of the circumstances with the goal of attaining voluntary compliance and eliminating any need to use any degree of force.

All officers shall be required to successfully complete de-escalation training, including but not limited to, crisis intervention training.

IV. PROCEDURES FOR THE USE OF LESS THAN LETHAL FORCE

A. Use of Less Than Lethal Force During Arrest

An officer may use less than lethal force upon another person only when the use of such force is reasonably necessary and proportionate to the resistance or threat the officer encounters. Accordingly, an officer may use

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less than lethal force only when the officer believes it reasonably necessary to:

1. Prevent the escape from custody or to effect an arrest of a person who the officer reasonably believes has committed an offense, unless the officer knows that the arrest is unauthorized; or
2. Defend him or herself or another person from what the officer reasonably believes to be the immediate use of physical force while affecting or attempting to affect an arrest, or while preventing or attempting to prevent an escape.


An officer who is compelled to use force immediately after taunting, verbally baiting, or otherwise initiating contact with a person that a reasonable officer would consider needless or unnecessary may not rely on paragraph IV A (1) or (2) of this Directive as justification for his or her acts in an administrative review of the use of force.

B. De-escalation Tactics

All officers have an affirmative duty to engage in de-escalation with a person while analyzing whether less than lethal force is or will be reasonably necessary, unless an officer reasonably believes that de-escalation will impede his or her ability to prevent an immediate threat to himself/herself or another person. Accordingly, officers shall use de-escalation techniques and communication strategies to calm individuals who appear to be agitated or threatening, or to gain compliance from unresponsive or uncooperative individuals who are not physically or verbally threatening officers or the public during an encounter. Officers should use time, distance, and shielding to avoid placing themselves in situations in which they have no choice but to make split-second decisions that could result in injuries or death to themselves or suspects.

Officers have an affirmative duty to intervene if they witness another officer engaging in the following conduct:

1. Failing to use time, distance, or shielding when it would be objectively reasonable for the officer to do so based on the totality of the circumstances;
2. Using ineffective communication;
3. Escalating an interaction; or

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4. Using force that a reasonable officer would deem excessive or unnecessary to gain compliance.

If an officer observes conduct listed in this Section IV B, then the observing officer shall intervene and/or take control of the encounter and assess whether less than lethal force is necessary to prevent an immediate threat against the officer(s) or another person according to the analysis as defined under “Reasonably Necessary” in this policy.

C. Verbal Warning, Dialogue, and Commands


If feasible, an officer will identify him or herself as a police officer and issue verbal instructions or a verbal warning before using force. In addition, officers shall attempt to de-escalate the situation through calm verbal dialogue, warnings, and commands, unless presented with an immediate threat.

D. Use of Force Continuum

Officers will use only the amount of force that is reasonably necessary under the totality of the circumstances. The Use of Force Continuum (Directive 600-020) is a guideline to assist officers in assessing which level of control may be appropriate when confronted with a certain level of resistance. The Use of Force Continuum does not replace the requirement that the level of force must be reasonably necessary and proportionate to the resistance or threat the officer encounters. Officers are responsible for reviewing the Use of Force Continuum on a regular basis.

E. Oleoresin Capsicum (OC Spray)

1. OC spray will normally be used when the officer is confronted with defensive resistance, as defined on the Use of Force Continuum, and:
 - a. The use is a reasonably necessary progressive step in the use of force to effect the arrest, to secure an arrestee, or to provide for the safety of the officer or others; and
 - b. Physical restraint of a person is not reasonable to bring the person under control without risk of injury to the person or the officer.
2. OC spray may be used to discourage an attack by an animal.
3. Officers are required to demonstrate proficiency in the deployment of OC in a training environment on a biennial basis.

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F. Non-violent Passive Protests


The use of OC spray or any other physical force will not be deployed when a person or group of persons are participating in a passive non-violent protest unless there is an immediate threat to the officer or another person's safety.

G. Conducted Electrical Weapon (CEW)

Deploying a CEW is a serious use of force. A CEW will be deployed only in response to a situation in which a reasonable officer would perceive some immediate danger that could be mitigated by using a CEW. The primary purpose of the CEW is to save human lives and prevent injuries. The use of the CEW is considered "high" on the continuum of less than lethal force and its use is authorized as an alternative to employing deadly force in situations when time and circumstance permit. The CEW should be used to restrain actively aggressive individuals when alternative restraint tactics fail or are reasonably likely to fail. It is not intended to be a substitute for other less than lethal force options.

1. Procedures


- a. Only officers who have successfully completed CMPD's TASER™ Operator training are authorized to carry and use a CEW.
- b. All officers authorized to carry and use the CEW are required to complete annual recertification training.
- c. When equipped with the CEW, officers will only wear the CEW holster on the non-gun side. Wearing of the CEW on the gun side is strictly prohibited.
- d. Uniform personnel that are issued a CEW are also required to carry their issued collapsible baton when on duty or working a secondary employment assignment.
- e. Officers will not make any adjustments to their CEW device settings.
- f. Each officer is responsible for the condition of their CEW and will thoroughly inspect the device before taking it into the field. Officers will:

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- 1) Inspect the device for any obvious damage, check the lights, laser site, frame, trigger housing, and safety switch for functionality.
- 2) Turn the device on and verify that battery strength is greater than 20%.
- 3) Each weapon will be spark tested at the beginning of every shift for operability testing. Spark testing will consist of turning the device on, depressing the ARC switch for one (1) second, and turning the device back off. At no time during the spark test should you pull the trigger.
- 4) Cartridges will be inspected for damaged or loose doors. Cartridges will not fire without the doors securely attached.
- 5) If a TASER™ device is determined to be unfit for duty, it will be taken to a Division Taser Technician and a new device will be issued. The device will be evaluated, repaired, and/or returned to the manufacturer.
- 6) All CEWs will be maintained in accordance with the 600-019A Management of Electronic Control Devices protocol.

2. Use of Conducted Electrical Weapons

- a. CEWs are limited to use against individuals who are exhibiting active aggression or who are actively resisting in a manner that is reasonably likely to result in injuries to the officer, the individual, or others. CEWs will not be used against a passive individual.
- b. The CEW falls in line with Impact Weapons on the Use of Force Continuum.
- c. Examples of situations when the CEW may be used in accordance with 2-a:
 - 1) When dealing with a mentally ill person who is actively aggressive, refer to 500-003, Management of Subjects in Extreme Distress;


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- 2) When confronted by individuals armed with knives, bottles, or other objects other than a firearm, where the individual poses an immediate threat to officers or citizens;
 - 3) When attempting to control violent persons who may be under the influence of drugs and/or alcohol and are exhibiting aggressive behavior or individuals whose aggressive behavior indicates that other methods of control may reasonably result in injury to the individual or officers. Officers should be aware that there is a higher risk of sudden death in individuals under the influence of drugs or exhibiting symptoms associated with excited delirium. Refer to 500-003, Management of Subjects in Extreme Distress.
 - 4) When an individual resists arrest and when the individual has the apparent ability to retrieve a weapon and the officer reasonably believes the individual has access to a weapon; and
 - 5) When confronted with a person expressing the intent and who has the immediate and reasonable means to commit suicide.
- d. Officers will verbally warn the individual before discharging the CEW, unless it would not be reasonable to do so under the totality of the circumstances. An ARC display may be used in conjunction with verbal warnings.
 - e. Initial use of the CEW will be for a full 5 second cycle, and then the officer will evaluate the need to apply a second 5 second cycle. Each subsequent 5 second cycle requires justification to deploy the CEW. Once the individual has been exposed to three cycles, the CEW may be deemed ineffective and another use of force option should be considered.
 - f. The intentional use of two or more CEW's simultaneously on the same person is strictly prohibited.
 - g. The use of the CEW "drive stun" mode should be used primarily to supplement the probe mode to complete the conductive circuit. The "drive stun" requires the same level of justification as a probe deployment.


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3. The CEW shall not be used:
 - a. When the officer cannot for safety or other reasons approach the person to within the effective range of the CEW;
 - b. In the proximity of flammable liquids, gases, or any other highly combustible materials that may be ignited by the device including any individual that may have been exposed to combustible substances or liquids such as gasoline;
 - c. In situations when deadly force is the most reasonably necessary option, unless another officer is in position to use deadly force against the individual.
 - d. On handcuffed persons unless doing so is necessary to prevent the person from causing serious bodily injury to him/herself or others.
 - e. Solely to prevent the escape of a person who is otherwise not displaying active aggression towards the officer or others.

4. In less than lethal force situations, officers will not use a CEW under the following situations:
 - a. On persons who do not pose an immediate threat of physical harm to themselves, the public, or officers;
 - b. On a person who is mentally ill and has not committed a crime and does not pose an immediate threat of physical harm to themselves, the public, or officers.
 - c. On a person who is in control of a vehicle (e.g., automobiles, trucks, motorcycles, ATVs, scooters), while that vehicle is moving or in gear;
 - d. On a person who is complying with an officer's commands;
 - e. During a demonstration or other lawful protest when the individual is only engaged in passive resistance;
 - f. When it is reasonable to believe that incapacitation of the person may result in serious injury or death (e.g., when the person's fall may result in death or serious injury).

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5. In less than lethal force situations, officers will not intentionally target the head, neck, upper chest area or genitalia of the person with a CEW.
6. In less than lethal force situations, officers shall be cognizant if the individual is visibly pregnant, elderly, otherwise infirm or of very young age and consider other nonlethal force options before deploying a CEW.
7. In less than lethal force situations, officers shall be cognizant of the risk of positional asphyxia and use restraint techniques that do not impair the breathing of an individual after application of the CEW.
8. Medical Considerations: Personnel should be aware that there is a higher risk of sudden death in persons under the influence of drugs and/or exhibiting symptoms associated with excited delirium. In accordance with Directive 500-003 Management of Subjects in Extreme Distress, MEDIC should be requested as soon as practical once it has been concluded that the individual may be at risk for positional/restraint asphyxia or excited delirium.
 - a. Whenever possible, when officers respond to Calls for Service in which they anticipate a CEW application may be used against an individual that may be at-risk for positional asphyxia, restraint asphyxia or excited delirium, the officer shall, as soon as practical, notify an on-duty supervisor and request MEDIC if they were not initially dispatched. The officer shall designate a nearby safe location for MEDIC personnel to stage until the scene is secure.
 - b. First Responders and MEDIC shall be requested for anyone who is subjected to the electrical discharge, including drive-stun exposures. Officers will closely monitor the individual until arrival of First Responders and MEDIC.
 - c. MEDIC personnel will complete on-scene probe removal and a medical evaluation on all individuals exposed to the CEW. MEDIC personnel will then evaluate the individual and determine whether the individual will be transported to the hospital.
 - d. If MEDIC clears the individual, the officer may then transport the individual directly to the intake center. In cases where an individual has been exposed to multiple CEW cycles exceeding 15 seconds, the officer will request that MEDIC

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transport the individual to the hospital for further examination and clearance before being transported to the jail.

- e. Darts that penetrate the skin will only be removed by medical personnel. CEW probes will be treated as biohazard materials.
- f. Internal Affairs will be responsible for the investigation of CEW applications when:
 - 1) Application exceeds 15 seconds;
 - 2) CEW is applied outside of policy and/or training; and
 - 3) The person is in an at-risk category (e.g., young children, elderly, pregnant).

H. Less Than Lethal Options

- 1. Officers with specialized training who are authorized and trained in the use of specialized equipment may use that issued equipment pursuant to a standard operating procedure approved by the Chief of Police or designee.
- 2. The use of less than lethal options is not considered deadly force.
- 3. Approved less than lethal equipment currently includes, but is not limited to:
 - a. Bean Bag rounds;
 - b. Chemical irritants;
 - c. Rubber pellets;
 - d. Conducted Electrical Weapons (CEW);
 - e. Canine; and
 - f. Other equipment as approved by the Chief of Police that is designed to incapacitate, but not designed or reasonably likely to deliver deadly force.


I. Impact Weapons

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1. Impact weapons may be used only when an officer is confronted with active aggression that is occurring against him or herself or another person.
 2. The use by an officer of a flashlight, baton, or similar object used as a club to strike a blow to the muscle groups of a person's arms or legs will be considered use of less than lethal force.
 3. A flashlight, baton, or similar object used as a club to strike a blow to a person's head/neck is prohibited except when deadly force is reasonably necessary.
 4. Officers are required to demonstrate proficiency in the use of impact weapons in a training environment on a biennial basis.
- J. Officers will not use the following tactics unless deadly force is reasonably necessary:
1. Any hold with or without a device that restricts a person's airway.
 2. Any strike with an impact weapon or object to a person's head or neck.
 3. Any other tactic that is reasonably likely to result in death or serious injury unless deadly force was reasonably necessary.
- K. Officers will not taunt, verbally bait, or initiate physical contact with an individual in a manner that a reasonable officer would deem needless or unnecessary.
- V. PROCEDURES FOLLOWING THE USE OF LESS THAN LETHAL FORCE
- A. Medical Treatment

An officer will summon appropriate medical aid whenever it would be reasonable to do so under the totality of the circumstances, including, but not limited to, when the individual requests medical assistance or, in the officer's reasonable opinion, the individual requires medical assistance. The officer will contact a supervisor if the officer is in doubt as to the necessity of medical treatment. In the event a supervisor is contacted; the supervisor will observe the individual prior to making the decision on whether to obtain medical aid.


After requesting the appropriate medical aid, additional actions taken by the officer may include:

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1. Securing the scene to protect the individual from any further injury;
2. Applying any first aid he or she is trained and certified to apply and other medical aid, as is reasonable based on the circumstances of the encounter, whether or not trained and certified; and
3. Providing increased observation of the individual to detect obvious changes in condition.


B. Documentation

1. Officers who use force on an individual will contact their supervisor immediately.
2. The officer's supervisor must be notified of all uses of force and must thoroughly investigate and determine when a Supervisor's Investigative Report is required.
3. If a Supervisor's Investigative Report is required, the supervisor is responsible for investigating the incident and for completing the report.
4. Upon completion of the report the supervisor will utilize the transfer function in IACMS to route the investigation to the next higher level in the chain of command for review and disposition.
5. There are additional requirements for use of force investigations involving CEW discharges.
 - a. Supervisors should photograph the impact points before and after removal (if possible).
 - b. A photograph should also be taken of the discharged cartridge, showing the wires and both probes.
 - c. The supervisor must include a TASER™ Data Download report, covering the previous 24 hours.
 - d. Complete the CEW addendum in the IA Case Management System.
6. Off-duty officers involved in use of force situations are subject to the same procedures as on-duty officers. When an off-duty officer is involved in a use of force situation, he or she will notify a police supervisor immediately. If the job or location has an off-duty supervisor assigned, that supervisor will complete the investigation

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and forward it to the officer's chain of command. If there is no off-duty supervisor assigned, an on-duty supervisor from the division where the job is located should be contacted. Additionally, on-duty supervisors shall assist off-duty supervisors with investigations, as needed.

7. The Department has attempted to identify all situations where an IACMS investigation should be completed. Such an investigation is required in any situation that clearly involves a use of force. The following are some examples of situations when the completion of an IACMS investigation is required:
 - a. An officer exercising police authority uses force which causes any visible or apparent physical injury, or which results in the individual saying that he or she was injured.
 - b. An officer exercising police authority uses any object, including baton, flashlight, hand, fist, or foot, to strike a blow to a person.
 - c. An officer exercising police authority uses force that in any way causes a person to suffer a blow to the head.
 - d. An officer uses OC spray on an individual.
 - e. An officer uses a CEW on an individual.
 - f. An officer uses a less than lethal option to affect the arrest or to control an individual, including pointing a firearm at an individual.
 - g. The Civil Emergency Unit or other specialized unit uses the less than lethal option(s) to disperse rioters, mobs, crowds, or barricaded individuals. In this situation the commander of that unit will complete one Supervisor's Investigative Report.
 - h. A police canine bite.
 - i. An officer exercises police authority on an individual resulting in the individual losing consciousness.
 - j. There is evidence that just prior to application of force an officer taunted, verbally baited, or initiated physical contact with the individual that a reasonable officer would deem needless or unnecessary.

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8. An IACMS investigation is also required when no apparent use of force has occurred, but an individual has sustained visible injuries while fleeing from police or while in custody. These injuries are categorized as No Force Subject Injury (NFSI) investigations in the IACMS. Examples include:

- a. A person fleeing from arrest and injures himself; and
- b. A person injures himself in any manner while handcuffed or in police custody.

C. Witness of Use of Force by an Employee

Any employee, who witnesses a use of force that is required to be reported, will notify a supervisor immediately and complete an Investigative Witness Form.


D. Notification

1. The investigating supervisor will notify the division commander and/or Operations Command as soon as possible whenever a CMPD employee has inflicted serious injuries.
2. If the force used is such that the affected individual requires hospitalization, Operations Command or the division commander will notify the commander of the Internal Affairs Bureau immediately, regardless of the hour of the day.

- E. The existence of one or more Supervisor Investigative Reports documenting a use of force by an individual employee, by itself, cannot be the basis for discipline against that employee.

VI. REFERENCES

300-020 Police Critical Incident Stress
 400-002 Firearms
 600-018 Use of Deadly Force
 600-019A Management of Conducted Electrical Weapons
 600-020 Use of Force Continuum
 500-003 Management of Subjects in Extreme Distress
 N.C.G.S. 15A-401(d)
Graham v. Connor, 490 U.S. 386.
 Armstrong v. The Village of Pinehurst, 810 F. 3d. 892 (4th Cir. 2016)

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I. PURPOSE

It is the purpose of this protocol to provide direction to officers regarding the maintenance and management of the department issued Conducted Electrical Weapon.

II. POLICY

TASERs™ are complex electronic devices that require routine preventative maintenance to ensure proper functionality and accurate device data. This policy will provide guidance to officers and supervisors regarding the management of devices and the preventative maintenance required to keep the devices in working order.

III. PROCEDURES

Equipment Management

- A. TASER™ repair will only be handled by CMPD sworn officers who are Technician certified by TASER™ International, and approved by the Training Academy. The Technician will also maintain records on each device in the current weapon assets management system.

Corrective actions to include disciplinary actions will be initiated when any TASERs™ are found to be in violation of policy as outlined in 600-019 Use of Less Lethal Force.

B. Preventative Maintenance


1. Preventative Maintenance will be conducted quarterly by Certified Technicians and Assistant Technicians.
2. The trigger will be tested during the quarterly maintenance by Certified Technicians and Assistant Technicians.
3. Personnel who are issued a TASER™ are expected to keep the devices clean, removing dirt and debris that may accumulate in the holster.
4. Personnel who are issued a TASER™ device will perform a weekly spark test prior to the beginning of their shift. A spark test will only be done by utilizing the ARC switch.
 - A five second ARC display and toggle between the two cartridge bays.
 - Will be done without unloading the X2 CEW.



- Point the CEW in a safe direction.
- Place the Safety Switch in the Up (ARMED) position.
- Depress the ARC Switch.
- Observe and hear both bays arcing.
- Use the ARC Switch to toggle between cartridge bays.

The Spark Test is done by depressing the ARC Switch. Do not pull the trigger to conduct the Spark Test.

5. Personnel who are issued a TASER™ device will conduct a daily inspection of the device. Any damages or inoperable condition will be reported to their first line supervisor.
- C. Property and Evidence Management Division will maintain cartridges, holsters, and a set of TASER™ devices.
1. Damaged cartridges can be exchanged by officers at the Property and Evidence Management Division or the division technicians. The damaged cartridge will be logged in, and a new cartridge issued to the officer. Damaged cartridges will be shipped back to the manufacturer for replacement.
 2. Discharged cartridges can only be exchanged for new cartridges by a supervisor.
 - a. If a cartridge was discharged in a use of force, the supervisor should have initiated a use of force investigative packet in the IACMS.
 - b. Supervisors will require a memorandum from any officer that has an accidental discharge of a TASER™ device. The supervisor will determine if any further investigation should be initiated. Accidentally discharged cartridges should be handled as described in Section C - 1 above.
 3. If the battery is below 10% power it should be replaced with a new battery, which can be obtained through Property and Evidence Management or the division technician.
 4. Only approved CMPD issue batteries will be used in the TASER™ device.
 5. If the device is malfunctioning, the officer will turn in the TASER™ for a new device at Property and Evidence Management Division. A new device will be issued through the current weapon assets

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management system by a Property and Evidence Management Division Technician.

6. Broken or damaged holsters or belt clips should be turned in to the Property and Evidence Management Division for replacement.

IV. REFERENCES

600-019 Use of Less Lethal Force
400-003 Equipment
CALEA


Levels of Resistance	Cooperative	Non-Verbal and Verbal Non-compliance	Passive Resistance	Defensive Resistance	Active Aggression	Aggravated Active Aggression
Levels of Control	Professional Police Presence					
	Verbal Dialogue and Commands					
			Soft Empty Hand Control			
				Oleoresin Capsicum Spray		
					Hard Empty Hand Control	
					Conducted Electrical Weapon	
					Impact Weapon	
					Lethal Force	

The Use of Force Continuum is a guideline for officers in making critical use of force decisions. The above image illustrates the options that an officer has at each level of resistance. It should be noted that professional presence and verbal interaction are present at every level of resistance. Accordingly, officers shall comport themselves in a professional manner and make all reasonable efforts to de-escalate an encounter.

Both State and Federal law require that all force be reasonable. In *Graham v. Connor*, the United States Supreme Court stated, “the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight”. In addition, an officer should take into account his or her abilities.

The reasonableness of a particular use of force must be evaluated from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that officers and the individuals they encounter may face circumstances that are tense, uncertain, and rapidly evolving.

In deciding which level of control an officer should use, the officer should reasonably believe that a lower level of control is not sufficient and a higher level of control is not reasonably necessary. The level of control must be based on and proportionate with the current level of resistance when the control is applied. The Use of Force Continuum is not designed to be a step by step progression. Therefore, the escalation and de-escalation by the officer or the individual may not be sequential. In circumstances when our directive conflicts with the continuum, an officer should rely upon the directive. For example, officers are prohibited from shooting at a moving vehicle unless the officer believes that no other option is reasonably available.

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Consistent with CMPD's culture of protecting all human life, verbal dialogue and commands seeking de-escalation of the situation shall be utilized throughout the encounter, unless doing so would reasonably jeopardize the safety of the individual, the officer, or another person.


Examples in the following sections are for clarification purposes and are not meant to be all inclusive.

Levels of Resistance:

- **Non-Verbal and Verbal Non-Compliance:** The individual expresses his intentions not to comply through verbal and non-verbal means. Statements by an individual ranging from pleading to physical threats may be encountered. This also includes physical gestures, stances, and subconscious mannerisms. The individual's actions at this stage do not equate to a risk of immediate danger to the officer, another person, or themselves.
- **Passive Resistance:** The individual does not cooperate with an officer's commands, and does not take action to prevent being taken into custody. An example of this would be when an individual is taken into custody and the individual goes limp. The individual must then be carried away upon arrest. The individual's actions at this stage do not equate to a risk of immediate danger to the officer, another person, or themselves.
- **Defensive Resistance:** The individual is actively taking measures to prevent being taken into custody. This action may include twisting, pulling, holding onto fixed objects, or running away. The individual's actions at this stage do not equate to a risk of immediate danger to the officer, another person, or themselves.
- **Active Aggression:** At this level of resistance, the individual poses a risk of immediate danger to the officer, another person, or themselves. This aggression may manifest itself through punching, kicking, striking, or any other action when apparent that the individual has the immediate means to injure an officer, another person, or themselves.
- **Aggravated Active Aggression:** Aggravated Active Aggression includes actions that are likely to result in the death or serious bodily injury to an officer. These actions may include discharge of a firearm, use of a blunt or bladed weapon, and extreme physical force.

Levels of Control:

- **Professional Presence:** The displays of visual images of authority as well as a professional manner are present at every level of resistance. This includes all

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symbols of police authority including the badge, uniform, and marked police vehicle.

- **Verbal Dialogue and Commands:** Communication is critical to any potential use of force situation. This level of control includes any verbal requests, directions, or commands from the officer to an individual. Verbal interaction is present at every level of resistance, and officers shall employ de-escalation techniques unless doing so would not be reasonable under the totality of the circumstances.
- **Soft Empty Hand Control:** These techniques are not impact oriented and may be appropriate when an individual is engaged in passive or defensive resistance. The most appropriate response to passive resistance may include simply grabbing onto an individual, applying pressure points, handcuffing an individual to maintain control, or applying a joint lock to control an individual's movement. The most appropriate soft empty hand control response to defensive resistance may include, arm bar takedowns, leg sweeps, and team takedowns.
- **Oleoresin Capsicum (OC) Spray:** OC spray is approved for use in situations where the officer reasonably believes that the attempts to control an individual may result in injury to the individual or the officer. OC should be utilized at a range of 3 to 8 feet, and should be accompanied by loud verbal commands.
- **Hard Empty Hand Control:** These techniques are impact oriented and include knee strikes, elbow strikes, punches, and kicks. Control strikes are used to get an individual under control and include strikes to pressure points such as the common peroneal (side of the leg), radial nerve (top of the forearm), or brachial plexus origin (side of neck). Defensive strikes are used by an officer to protect him or herself from attack and may include strikes to other areas of the body including the abdomen or head.
- **Conducted Electrical Weapon (CEW):** The TASER™ device is used in situations where an individual presents an immediate physical threat to an officer, themselves, or another person.
- **Impact Weapon:** Less Than Lethal impact weapon strikes are targeted towards major muscle groups. The common peroneal nerve on the side of the leg is the primary target for impact weapon strikes.
- **Lethal Force:** Lethal force is any manner of force that is reasonably likely to cause death or serious injury. This includes, but is not limited to, the use of a firearm, striking the head or neck area with an impact weapon, or the choking of an arrestee.